

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

AARON GUERRERO.

Plaintiff,

V.

GABRIEL GRASSO, et al.,

Defendants.

Case No. 2:24-cv-00261-MMD-BNW

REPORT AND RECOMMENDATION

10 On February 6, 2024, Plaintiff filed his complaint. ECF No. 1. Because he failed to pay
11 the filing fee or apply to proceed *in forma pauperis*, the Court gave him 30 days to submit the IFP
12 application or pay the fee. ECF No. 3. Plaintiff failed to comply with the deadline, so the Court
13 recommended that his case be dismissed. ECF No. 4. Plaintiff objected to the recommendation
14 and requested an extension of the deadline. ECF No. 5. The Court vacated its recommendation
15 and gave Plaintiff a new deadline. ECF No. 6. Plaintiff has once again failed to comply with the
16 deadline and to date has not submitted an application or paid the fee. As a result, the Court
17 recommends that Plaintiff's case be dismissed without prejudice.

18 The law permits a district court to dismiss an action based on a party’s failure to comply
19 with a court order. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for
20 failure to comply with an order requiring amendment of complaint). In determining whether to
21 dismiss an action on this ground, the court must consider: (1) the public’s interest in expeditious
22 resolution of litigation, (2) the court’s need to manage its docket, (3) the risk of prejudice to the
23 defendants, (4) the public policy favoring disposition of cases on their merits, and (5) the
24 availability of less-draastic alternatives. *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d
25 1217, 1226 (9th Cir. 2006) (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir.
26 1987)).

27 The first two factors, the public's interest in expeditiously resolving this litigation and the
28 Court's interest in managing its docket, weigh in favor of dismissal of Plaintiff's claims. The third

1 factor, risk of prejudice to Defendants, also weighs in favor of dismissal because a presumption of
 2 injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court
 3 or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth
 4 factor—the public policy favoring disposition of cases on their merits—weighs against dismissal.

5 The fifth factor requires the Court to consider whether less-drastic alternatives can be used
 6 to correct the party's failure that brought about the Court's need to consider dismissal. Courts
 7 "need not exhaust every sanction short of dismissal before finally dismissing a case, but must
 8 explore possible and meaningful alternatives." *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th
 9 Cir. 1986). Because this action cannot proceed without a completed IFP application or a paid
 10 filing fee, the only alternative is to enter another order setting another deadline. The
 11 circumstances here do not indicate that Plaintiff needs additional time. Therefore, setting another
 12 deadline is not a meaningful alternative. So, the fifth factor favors dismissal.

13 In balance, the factors above favor a recommendation of dismissal. *See Hernandez v. City*
 14 *of El Monte*, 138 F.3d 393 (9th Cir. 1998) (holding that dismissal is proper where at least four
 15 factors support dismissal or where at least three factors "strongly" support dismissal).

16 **IT IS THEREFORE RECOMMENDED** that this action is **DISMISSED** without
 17 **prejudice** for failure to comply with the Court's deadline.

18 **NOTICE**

19 This report and recommendation is submitted to the United States district judge assigned
 20 to this case under 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation
 21 may file a written objection supported by points and authorities within fourteen days of being
 22 served with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely
 23 objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951 F.2d 1153,
 24 1157 (9th Cir. 1991).

25
 26 DATED: October 7, 2024

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 28 
 BRENDAG WEKSLER
 UNITED STATES MAGISTRATE JUDGE